KOW LIANG TIANG A

v.

PP

COURT OF APPEAL, PUTRAJAYA B
AHMAD MAAROP JCA
MOHAMED APANDI ALI JCA
BALIA YUSOF WAHI J
[CRIMINAL TRIAL NO: J-05-151-2008]
30 MAY 2011 C

CRIMINAL LAW: *Murder - Conviction and sentence - Appeal against - Conviction based on circumstantial evidence - Whether circumstantial evidence sufficient to prove murder - Penal Code, s. 302*

EVIDENCE: *Circumstantial evidence - Securing conviction on - Conduct of appellant - Facts in issue - Consistency of police reports made - Blood samples taken - Whether cumulatively proved appellant's guilt in murder - Evidence Act 1950, ss. 7, 8(2), 14, 35 - Penal Code, s. 302* D

This was an appeal against the decision of the High Court convicting the appellant of murder and sentencing him to death pursuant to s. 302 of the Penal Code. The appellant's wife ('the deceased') was found dead with multiple stab wounds at their matrimonial home in Tampoi. On that fateful day, the appellant together with his son of tender age and with Down Syndrome, had driven to his sister's ('SP5') house in Skudai at the wee hours of the morning where he confessed to have had a 'serious quarrel' with the deceased. He left the child under SP5's care to be sent to an orphanage. SP5 then narrated the appellant's quarrel to her sister in law, who in turn, gathered the rest of her family members at the appellant's house in Tampoi that same morning where the deceased was later found. During trial, the appellant, in his written statement, claimed that he was under the influence of drugs and denied the fact that he had killed the deceased. In the absence of direct evidence, the prosecution relied on the circumstantial evidence namely: (i) the appellant's visit to his sister's house and the conversation he had with her; (ii) the consistency of two police reports, *ie*, the first report lodged by the deceased's family members upon finding the house locked in Tampoi whereas, the second was subsequently lodged by SP5 in Skudai; (iii) a blood-stained scissor that was bent at the end of the blade with a E F G H I

broken handle; (iv) a T-shirt and shorts with traces of blood stains; (v) the appellant's injuries found on his right hand palm when he was arrested; (vi) the chemist's report; and (vii) the post-mortem report. Having analysed all the evidence adduced by the prosecution and after giving due evaluation, it was concluded that the prosecution had proven a *prima facie* case against the appellant and hence, the conviction and sentence. In his appeal, the appellant submitted the following: (i) the circumstantial evidence was insufficient to secure the conviction; (ii) there were gaps in the prosecution's case, *ie*, with regards to the blood samples of the appellant and that of the deceased; and (iii) the conduct of the appellant as explained by him raised two versions of the alleged offence.

Held (dismissing the appeal)
Per Mohamed Apandi Ali JCA:

(1) The circumstances that led to the making of two police reports gave a very strong inference that the appellant had committed the offence. The appellant was the last person to have been with the deceased. Both reports were made hours after the appellant went to his sister's house and the contents were substantively the same and, thus, should have been admitted as evidence under s. 35 of the Evidence Act 1950 ('the Act'). (paras 3 & 10)

(2) It was irrational to indicate that the appellant was under the influence of drugs having driven his motor lorry to SP5's house in Skudai. Moreover, his arrangement with SP5 to send his son to an orphanage following his quarrel with the deceased indicated that it was not a temporary measure but a drastic one. The conduct of the appellant in calling his sister, driving to his sister's house, refusing to report to the police despite being advised by his sister, handing over his son to be kept at an orphanage and staying at a "Rumah Tumpangan" were relevant within the meaning of s. 8 (2) of the Act. The "serious" quarrel prior to the commission of the offence between the appellant and the deceased was another strong strand of evidence within the meaning of s. 14 of the Act. (para 10)

(3) The broken scissors could have caused the injuries to the appellant's right hand palm probably at the force of how it was used. The police report lodged by the arresting officer corroborating the appellant's injury was not challenged neither was his testimony cross-examined and, thus, constituted the connection between the appellant and the murder weapon. (para 10)

(4) There was evidence to show that the t-shirt and shorts with traces of blood found in a pail in the house belonged to the appellant. The chemist report confirmed that the blood stains on the scissors, t-shirt and shorts was the blood type of the deceased. The doctor who conducted the post-mortem confirmed that the scissors could have caused the multiple and penetrating wounds found on the deceased. (para 10)

(5) The bent and broken scissors, the injuries to the appellant's right hand palm, the deceased blood stains on the appellant's clothing were all revealing facts that formed the strands of circumstantial evidence within the criteria set out in s. 7 of the Act linking the appellant to the murder. (para 10)

(6) The police arriving at the crime scene had to break open the door to gain entry as it was locked. There was also no sign of forced entry into the house and, thus, eliminated the existence of any other persons being involved in the crime. (para 10)

(7) The evidence showed that the blood samples were properly named, labelled and were in relation to this criminal investigation. Therefore, there was no issue for lack of clear evidence as to who took the blood samples of the deceased and the appellant. There were no gaps in the prosecution's case as claimed by the appellant that gave rise to any reasonable doubt. (para 10)

(8) The circumstantial evidence was sufficient and strong enough to sustain the finding of the appellant's guilt. The cumulative evidence though circumstantial, had irresistibly pointed to the one and only conclusion that it was the appellant who had caused the injuries to the deceased resulting in her death. All the elements for the offence of murder as defined under s. 302 of the Penal Code had been proven beyond reasonable doubt. (para 12)

A ***Bahasa Malaysia*** *Translation Of Headnotes*

Ini adalah rayuan terhadap keputusan Mahkamah Tinggi menyabitkan perayu dengan kesalahan pembunuhan dan menjatuhkan hukuman mati ke atasnya menurut s. 302 Kanun
B Keseksaan. Isteri perayu ('simati') ditemui mati dengan beberapa kesan tikaman di kediaman mereka di Tampoi. Pada hari simati meninggal, perayu bersama-sama dengan anak kecilnya yang mengalami masalah down syndrome, telah pergi ke rumah kakaknya ('SP5') di Skudai pada waktu awal pagi di mana beliau telah
C mengaku bahawa telah berlakunya pergaduhan serius di antara beliau dan simati. Perayu telah meninggalkan anaknya dengan SP5 untuk dihantar ke rumah anak yatim. SP5 telah menceritakan perkelahian perayu kepada adik iparnya, yang kemudiannya, mengumpulkan seluruh ahli keluarganya di rumah perayu di Tampoi
D pada pagi yang sama di mana kemudiannya simati dijumpai mati. Semasa perbicaraan, perayu, di dalam kenyataan bertulis beliau, mendakwa bahawa beliau berada di bawah pengaruh dadah dan menafikan bahawa beliau telah membunuh simati. Dalam ketiadaan keterangan terus, pihak pendakwaan telah bergantung kepada
E keterangan ikut keadaan iaitu (i) lawatan perayu ke rumah adiknya dan perbualan mereka; (ii) ketekalan dua laporan polis iaitu laporan pertama yang telah dibuat oleh ahli keluarga simati apabila mendapati rumah perayu dan simati di Tampoi dikunci manakala laporan kedua yang kemudiannya dibuat oleh kakak perayu di
F Skudai; (iii) gunting yang berlumuran darah yang bengkok pada akhir bilah dengan pemegang yang patah; (iv) kemeja t dan seluar pendek yang mempunyai kesan-kesan darah; (v) kecederaan-kecederaan yang terdapat di tapak tangan kanan perayu apabila beliau ditahan; (vi) laporan ahli kimia dan (vii) laporan post
G mortem. Setelah menganalisis dan menilai semua keterangan yang telah dikemukakan oleh pihak pendakwaan, kesimpulan dibuat bahawa pihak pendakwaan telah membuat kes *prima facie* terhadap perayu dan, oleh itu, sabitan dan hukuman. Dalam rayuannya, perayu telah berhujah bahawa (i) keterangan ikut keadaan tidak
H mencukupi untuk mendapatkan sabitan; (ii) terdapat jurang-jurang dalam kes pendakwaan iaitu berhubungan dengan sampel-sampel darah perayu dan simati dan (iii) kelakuan perayu seperti yang telah diterangkan olehnya telah membangkitkan dua versi kesalahan yang didakwa.

I

Diputuskan (menolak rayuan)
Oleh Mohamed Apandi Ali HMR:

(1) Keadaan yang membawa kepada pembuatan dua laporan polis memberi satu inferens sangat kuat bahawa perayu telah melakukan kesalahan yang didakwa. Perayu adalah orang terakhir yang berada dengan simati. Kedua-dua laporan dibuat beberapa jam selepas perayu telah pergi ke rumah kakaknya dan kandungan adalah sebahagian besarnya sama dan, oleh itu, sepatutnya dimasukkan sebagai keterangan di bawah s. 35 Akta Keterangan 1950 ('Akta').

(2) Ia adalah tidak rasional untuk menunjukkan bahawa perayu di bawah pengaruh dadah kerana beliau telah memandu motor lori ke rumah SP5 di Skudai. Lagipun, susunannya dengan SP5 untuk menghantar anak lelakinya ke rumah anak yatim selepas pergaduhannya dengan simati menunjukkan bahawa ia bukan langkah sementara tetapi satu langkah drastik. Kelakuan perayu apabila perayu menelefon kakaknya, memandu ke rumah kakaknya, keengganannya melaporkan ke pihak polis walaupun telah dinasihatkan oleh kakaknya, menyerahkan anak lelakinya untuk dijaga oleh rumah anak yatim dan menginap di rumah tumpangan adalah relevan mengikut pengertian s. 8(2) Akta. Pergaduhan "'serius"' sebelum pelakuan kesalahan itu di antara perayu dan simati adalah satu lagi bebenang keterangan yang kuat mengikut pengertian s. 14 Akta.

(3) Gunting patah mungkin telah menyebabkan kecederaan kepada tapak tangan kanan perayu mengikut tenaga bagaimana ia telah digunakan. Laporan polis yang telah dibuat oleh pegawai yang melakukan tangkapan menyokong kecederaan perayu itu tidak dicabar begitu juga testimoni beliau tidak diperiksa balas dan, oleh itu, merupakan perhubungan di antara perayu dan senjata pembunuhan.

(4) Terdapat keterangan yang menunjukkan kemeja T dan seluar pendek yang mempunyai kesan-kesan darah ditemui di dalam baldi di dalam rumah kepunyaan perayu. Laporan ahli kimia mengesahkan bahawa kesan-kesan darah atas gunting, kemeja T dan seluar pendek adalah jenis darah si mati. Doktor yang menjalankan post mortem mengesahkan bahawa gunting yang disebut kemungkinan besar telah menyebabkan pelbagai luka dan tembusan yang terdapat pada simati.

A **(5)** Gunting bengkok dan patah, kecederaan pada tapak tangan perayu, kesan-kesan darah simati atas pakaian perayu adalah pendedahan fakta-fakta yang membentuk bebenang-bebenang keterangan ikut keadaan dalam kriteria yang dinyatakan di dalam s. 7 Akta menghubungkan perayu kepada pembunuhan.

B **(6)** Polis yang tiba di tempat kejadian terpaksa memecah buka pintu untuk dapat masuk kerana ia dikunci. Juga tiada tanda-tanda pecah masuk ke dalam rumah dan, oleh itu, ia menghapuskan kewujudan mana-mana orang lain yang terlibat
C dalam jenayah itu.

(7) Keterangan menunjukkan sampel-sampel darah dinamakan dan dilabelkan dengan betul dan berhubungan dengan siasatan jenayah ini. Oleh itu, tiada isu kekurangan keterangan yang jelas mengenai siapa yang mengambil sampel-sampel darah
D simati dan perayu. Tidak terdapat jurang-jurang di dalam kes pendakwaan seperti yang dituntut oleh perayu yang menimbulkan apa-apa keraguan munasabah.

(8) Keterangan ikut keadaan adalah memadai dan cukup kuat
E untuk mengekalkan dapatan kebersalahan perayu. Keterangan-keterangan terkumpul walaupun adalah mengikut keadaan, ia menunjukkan satu-satunya kesimpulan bahawa ia adalah perayu yang telah menyebabkan kecederaan-kecederaan kepada simati mengakibatkan kematiannya. Semua unsur-unsur kesalahan
F pembunuhan seperti yang ditakrifkan di bawah s. 302 Kanun Keseksaan telah dibuktikan melampaui keraguan munasabah.

Case(s) referred to:
Chan Chwen Kong v. PP [1962] 1 LNS 22 HC ***(refd)***
G *Eng Sin v. PP [1974] 1 LNS 33 FC* ***(refd)***

Legislation referred to:
Evidence Act 1950, ss. 7, 8(2), 14, 35
Penal Code, s. 302

H *For the appellant - Gobind Singh Deo; M/s Gobind Singh Deo & Co*
For the respondent - Fatnin Yusuf DPP

[Appeal from High Court, Johor; Criminal Trial No: MT3-45-28-2006]

Reported by Melanie Murthy

I

JUDGMENT

Mohamed Apandi Ali JCA:

Introduction

[1] The appellant was found guilty of the offence of committing murder of his wife and was accordingly sentenced to death by the High Court. The appellant's appeal is naturally against the conviction and sentence.

[2] The charge against the appellant reads as follows:

> Bahawa kamu pada 4.11.2005 antara 2.00 pagi dan 3.40 pagi di rumah No. 02-45 B, Jalan Mawar 4, Taman Tampoi Indah 2, Tampoi, di dalam daerah Johor Bahru, dalam Negeri Johor Darul Ta'zim, telah melakukan kesalahan membunuh dengan menyebabkan kematian ke atas SHAM YOKE PENG, NO. K/P: 680131-05-5426, dan dengan itu kamu telah melakukan kesalahan yang boleh dihukum di bawah Seksyen 302 Kanun Keseksaan.

Facts Of The Case

[3] It is not in dispute that the evidence adduced against the appellant were circumstantial evidence. There was no direct evidence. The circumstantial evidence as unfolded at the trial are as follows:

(a) On 4 November 2005 in the wee hours, at 3.45am the appellant drove to his sister's house in Taman Universiti, Skudai Johor. He went with his son, of tender age and who was of down syndrome. He drove a motor lorry from Tampoi to Skudai. Upon arrival at his sister's house he told his sister (Kow Ee Luang, SP5) that he had a 'serious' quarrel with his wife (the deceased) at their matrimonial home in Tampoi. Appellant then left his child with Kow Ee Luang for her custody and he then left the house.

(b) SP5 then contacted her sister in law, Sham Yoke Ying (SP7) and narrated to her about the appellant's quarrel with his wife and asked SP7 to come and fetch her, to go to the appellant's house in Tampoi. This conversation took place at about 4am of the same morning.

(c) SP7, in turn called her brother, Sham Yee May, SP6. This took place at about 5am, the same morning.

A (d) SP7 with her husband, Cheng Swiss Kim (SP9) together with SP6 and SP6's wife then went to the appellant's house at Taman Tampoi Indah 2 in Tampoi. This was about 6am of the same morning. At the house, Sham Yee May, SP6 and SP9 tried to enter the house but it was locked. They all then
B proceeded to Balai Polis Tampoi where SP5 then lodged a police report. This took place at about 6.30am on the same morning. The first information report was made by the police personnel on duty, L/Cpl. Mohd. Yusuf bin Latip (SP1) *vide* Tampoi Report No. 016124/05 (P4). Anyway SP5's own
C police report was subsequently lodged; *vide* Skudai Report No. 014961/05 (P5). All police investigations in the case were made pursuant to the police report P4.

(e) Upon receiving the police reports P4 and P5, the I.O. ASP
D Ashmon (SP12) went to the crime scene on 4 November 2005 at 8.30am. Earlier the police had to break the door in order to enter the house. They found the deceased, Sham Yoke Peng lying on a bed. Amongst other items, the police recovered a blood-stained scissors, a T-shirt and shorts with
E blood stains from the house. The scissors was bent at end of the blade and the handle was broken. It was produced and marked as exh. P8A. The T-shirt and shorts with blood stains were marked as exhs. P10A and P11A respectively.

F (f) The appellant was arrested by Insp. Juna bin Yusof (SP4) in Room No. 8, Rumah Tumpangan Orchid, Jalan Penang, Taman Kota Kulai, Kulai, at 8.45pm on 5 November 2005. Upon examination by SP4, it was found that the appellant had injuries on the palm of his right hand.

G (g) A post-mortem on the deceased, Sham Yoke Peng, was conducted by Dr. Shahidan Mohd. Noor (SP4) on 6 November 2005. Cause of death was due to: (i) "soft tissue injuries" and (ii) "multiple stab and penetrating wounds".

H (h) All exhibits recovered in the course of police investigations were sent to the chemist, Jayasilan (SP11) for analysis. It was disclosed that the deceased's blood was of type "B" and that the appellant's blood was of type "O". The chemist reports were tendered and marked as exhs. P28 and P35.

I

Findings By The High Court

[4] The learned trial judge wrote a lengthy 'speaking' grounds of judgment. The judge had correctly analysed all the evidence adduced by the prosecution and after giving due evaluation he concluded that the prosecution have proved a *prima facie* case at the end of the prosecution's case. He concluded by stating:

> Setelah menilai keterangan-keterangan yang ada di hadapan mahkamah, mahkamah membuat penemuan positif bahawa terdapat keterangan-keterangan ikut keadaan yang jika dilihat secara keseluruhan dan digabungkan adalah mencukupi bagi membuktikan satu kes *prima facie* terhadap pertuduhan yang dikemukakan terhadap OKT.

[5] The learned trial judge had sufficiently cautioned himself of the fact that the evidence against the appellant were circumstantial evidence.

[6] The appellant elected to give evidence from the dock, by giving a written statement, which reads as follows:

> Nama saya Kow Liang Tiang (no. kad pengenalan: 641216-01-5245). Saya adalah tertuduh di dalam kes Mahkamah Tinggi (3) Johor Bahru, Perbicaraan Jenayah No. MT(3) 45-28-2006. Saya menyatakan bahawa pada malam 3.11.2005, saya sudah 3 hari tidak tidur sebab saya makan banyak dadah "ice". Saya juga makan ubat tidur jenis "Domicom" 10 biji. Lepas itu saya sudah tidak sedarkan diri. Selepas itu, saya dengar anak saya nama Kia Fu menangis dan kejut saya. Selepas bangun, saya bawa Kia Fu ke rumah kakak saya nama Kow Ee Luang suruh hantar anak saya ke rumah anak yatim. Selepas itu saya pergi ambil barang dengan lori. Sebelum ini saya selalu keluar malam naik lori. Saya sangat sayang isteri saya dan saya tidak bunuh isteri saya. Saya menafikan pertuduhan di atas. Sekian sahaja kenyataan saya.

[7] The appellant did not call any witness for his defence.

[8] At the end of the trial, the learned trial judge make the following findings and conclusion:

> Selepas meneliti pernyataan OKT bersama-sama dengan keterangan lain di hadapan mahkamah, mahkamah memutuskan bahawa pembelaan OKT tidak menimbulkan apa-apa keraguan munasabah terhadap kes pihak pendakwaan kerana:

A (i) mengikut keterangan ASP Ashmon bin Bajah (SP12), pegawai penyiasat kes ini, bahawa beliau telah membuat pemeriksaan di dalam rumah kejadian tetapi tidak menjumpai sebarang botol minuman keras, dadah atau racun. Sekiranya OKT mengambil dadah jenis "ice" dan ubat tidur "Domicom", sudah tentu ia akan ditemui oleh SP12;

B

(ii) keterangan OKT bahawa beliau mengambil dadah jenis "ice" dan ubat tidur jenis "Domicom" adalah "a recent invention". Peguambela terpelajar tidak pernah langsung mengemukakan kepada saksi-saksi pendakwaan semasa mereka disoal balas
C mengenai perkara ini. (Lihat kes *Wong Swee Chin v. PP* [1981] 1 MLJ 212);

(iii) tidak ada kemungkinan orang lain memasuki rumah tersebut pada hari kejadian kerana mengikut keterangan SP6 dan SP9, pintu rumah tersebut berkunci. Pihak polis yang pergi ke
D rumah tersebut selepas SP2 membuat laporan polis (Eks. P5) terpaksa memecahkan pintu rumah tersebut. SP12 juga mengesahkan bahawa "tiada tanda-tanda rumah itu dipecahkan masuk dari balkoni dan pintu belakang";

(iv) OKT langsung tidak memberi penjelasan mengapa T-shirt
E dan seluarnya mempunyai kesan darah kumpulan "B" dan mengapakah beliau telah pergi ke rumah kakaknya di waktu pagi hari (jam 3.45 pagi) dan memaklumkan kepada SP5 bahawa beliau telah bergaduh "serious" dengan si mati dan meminta SP5 menghantar anaknya yang terencat akal ke
F rumah anak yatim. Begitu juga OKT gagal untuk memberi penjelasan mengapakah beliau melarikan diri dan pergi ke rumah tumpangan selepas kejadian ini. Di samping itu tangannya juga terdapat kesan-kesan luka yang tidak diberi sebarang penjelasan;

G (v) pihak pembelaan tidak mencadangkan bahawa anak OKT yang terencat akal telah melakukan pembunuhan terhadap si mati. Pada masa itu anak tersebut berumur 9 tahun. Oleh kerana tiada orang lain pada masa kejadian melainkan OKT dan anak terencat akal tersebut, berdasarkan semua
H keterangan ikut keadaan yang terdapat dalam kes ini, adalah munasabah untuk diputuskan bahawa OKT adalah orang yang bertanggungjawab melakukan pembunuhan tersebut. Kecederaan yang dialami oleh si mati juga mengukuhkan kesimpulan tersebut. OKT juga tidak mengatakan si mati telah membunuh diri ("suicide").

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At the end he concluded as follows:

> Oleh itu, di akhir kes pembelaan, adalah menjadi penemuan spesifik mahkamah ini bahawa pihak pendakwaan telah berjaya membuktikan kesnya tanpa keraguan yang munasabah terhadap OKT dan selaras dengan S. 182A(1) Kanun Prosedur Jenayah, mahkamah mendapati OKT bersalah dan disabitkan dengan kesalahan tersebut.

All of the above indicated a conclusive finding of facts by the learned trial judge.

Argument By Counsel At The Appeal Stage

[9] The learned counsel for the appellant in his submissions concentrated on three main contentions:

(a) That the circumstantial evidence is insufficient to secure the conviction;

(b) That there are gaps in the prosecution's case, namely with regards to the blood samples of the appellant and that of the deceased; and

(c) That the conduct of the appellant as explained by the appellant has given rise to two versions of the alleged offence.

Our Findings And Conclusion

[10] Upon perusal of the appeal records and after hearing the respective submissions, we made the following findings in respect of the main contentions of the appellant:

(a) The circumstances leading to the making of the police reports (P4 and P5) do gave a very strong inference of the commission of the offence by the appellant. The police reports were made hours after the appellant went to his sister's house at 3.45am on 4 November 2005 which was shortly after the quarrel the appellant had with his deceased wife. It is also noted that the contents of P4 is substantively the same with that in P5. The said police reports must have been admitted under the provisions of s. 35 of the Evidence Act 1950.

In such circumstances the appellant is the last person to be with the deceased. The above evidence read with the evidence that the appellant drove a motor lorry from his house

A in Tampoi to his sister's house in Skudai could not reasonably indicate that he was under the influence of drugs, as claimed. Furthermore, his intimation to his sister that his son was to be sent to an orphanage, clearly indicates that such arrangement was not a temporary measure, following his
B quarrel with his wife. The most reasonable inference is that he had knowledge of what had happened to his wife to merit such drastic action.

When the appellant was arrested at a Rumah Tumpangan in
C Kulai on the next day, his right hand palm was injured. This fact is to be seen in the light of facts that the alleged murder weapon, in the form of a pair of scissors, had a broken handle and that the blade was bent. The scissors must have been used with such force that the end of the blade was bent, and
D that in the course of which, it must have caused the injuries to the right hand palm.

The existence of any other person that could possibly be involved has been eliminated by the fact that prior to the
E arrival of the police at the scene the house was locked. When the police came, they have to break-down the door in order to gain entry. There is also no sign of any other forced entry into the house.

Besides recovering the blood-stained scissors the police also
F recovered a T-shirt and shorts with traces of blood stains in a pail in the house. There is evidence to show that the T-shirt and shorts are those of the appellant. The chemist later confirmed that the blood stains on the scissors, T-shirt and shorts is that of type "B", which was the blood type of the
G deceased. The doctor who conducted the post-mortem confirmed that the scissors (P8A) could have caused the multiple and penetrating wounds found on the deceased.

(b) On the issue of gaps in the prosecution's case, ie, the lack of
H clear evidence as to who took the blood samples of the deceased and the appellant, we find that there are not such gaps. On the other hand, there are evidence to show otherwise.

I

Upon closer scrutiny of the appeal record, it dawned upon us that the issue raised here revolved around two particular exhibits, namely the envelope marked "H4" and its contents (which is exh. P20) and the envelope marked "H8" and its contents (which is exh. P24). SP11, the chemist testified as follows (at p. 39 of the record of appeal):

> Pada tarikh 7.11.2005, saya bertugas di Jabatan Kimia Johor sebagai Ahli Kimia di Seksyen Serologi/ Kriminalistik. Pada tarikh tersebut, pada jam 2.08 petang, saya telah menerima 14 sampul surat (masing-masing bertanda "M1" hingga "M4", "H3" hingga "H8", "E1" hingga "E4" dan 2 bungkusan plastik (masing-masing bertanda "H1" dan "H2") dan kesemuanya bermeteri "POLIS DIRAJA MALAYSIA 641" daripada ASP Ashmon bin Bajah.

and SP11 explained what were in the envelopes marked "H4" and "H8" respectively. He said (at p. 42 of the record of appeal):

> Kelapan, saya telah memeriksa sampul surat "H4" dan mendapati di dalamnya satu botol kaca universal (berlabel 'SHAM YOKE PENG') berisi specimen darah. Setelah dianalisis, saya dapati botol kaca tersebut mengandungi 'specimen' darah manusia kumpulan "B" dan tidak mengandungi dadah atau racun kebiasaaan dalam 'specimen' darah tersebut. (Menggunakan kaedah 1 hingga 4 seperti pada sampul surat "M1");

and

> Kedua belas, saya telah memeriksa sampul surat "H8" dan mendapati di dalamnya satu peket plastik berisi satu tiub plastik (berlabel "KOW LIANG TIANG") berisi 'specimen' darah. Setelah dianalisis, saya dapati tiub plastik tersebut mengandungi 'specimen' darah manusia kumpulan "O". (Menggunakan kaedah 1 hingga 4 seperti pada sampul surat "M1").

On the blood sample of the appellant, SP11 (at p. 46) has this to say:

> Saya tidak diminta oleh pegawai perubatan untuk menjalankan ujian mengesan kehadiran racun, alkohol atau dadah dalam sampel darah OKT. Pegawai perubatan tersebut ialah Dr. D. Danalashmi.

From the above it is clear that the blood sample of the appellant was taken by one Dr. D. Danalashmi.

It must also be borne in mind that all the exhibits recovered and tendered at the trial, were in relation to the investigation of this particular murder and not to any other case. This can be seen in the evidence of the Investigating Officer, ASP Ashmon, SP12, where (at pp. 50-51 of the record of appeal) it was recorded as follows:

> Saya juga ada hantar barang-barang kes ke Jabatan Kimia.
>
> Barang-barang kes yang dihantar ke Jabatan Kimia ialah sebanyak 16 item barang kes, iaitu "M1", "M2", "M3", "M4", "H1", "H2", "H3", "H4", "H5", "H6", "H7", "H8", "E1", "E2", "E3", "E4".
>
> Mahkamah: Semuanya ditunjuk kepada saksi satu persatu dan dicamkan.
>
> Dikemuka dan ditanda sebagai Eks. P11, Eks. P10, Eks. P15, Eks. P16, Eks. P17, Eks. P18, Eks. P19, Eks. P20, Eks. P21, Eks. P22, Eks. P23, Eks. P24, Eks. P8, Eks. P25, Eks. P26 dan Eks. P27.
>
> Mahkamah: Eks. D8A ditunjuk kepada saksi. Dicamkan.
>
> Dikemuka dan ditanda sebagai Eks. P8A.
>
> Eks. ID11A ditunjuk kepada saksi dan dicamkan.
>
> Dikemuka dan ditanda sebagai Eks. P11A.
>
> Eks. ID10A ditunjuk dan dikemuka kepada saksi.
>
> Dikemuka dan ditanda sebagai Eks. P10A.
>
> Barang-barang kes dihantar ke Jabatan Kimia pada 7.11.2005, jam lebih kurang 1408 hrs.
>
> Barang-barang kes diserahkan kepada En. Jayasilan a/l Sinnathurai.

The chemist reports (exh. P28 and P35) also clearly indicated that the reports were made in relation to Tampoi Report 16124/05, which is the first information report lodged by L/Cpl. Mohd. Yusuf bin Latip, SP1. Tampoi Report 16124/05

was produced and marked as exh. P4. SP10, Sgt Anwar who was in charge of exhibits confirmed that all the exhibits were in relation to the police report P4. SP10's evidence was recorded (at p. 36 of the record of appeal) as follows:

> Apabila saya ambil alih tugas, saya telah diserahkan dengan barang kes bersabit Tampoi Report 16124/05. Barang-barang kes yang diterima:
>
> 1) 16 sampul bersil Jabatan Kimia JB(FOR) 2752/05-0 bertanda "M2", "H2", "M3", "M1", "M4", "H1", "E1", "E2", "E3", "E4", "H3", "H4", "H5", "H6", "H7" dan "H8"; dan
>
> 2) 6 bungkusan bersil Jabatan Kimia JB(FOR)2800/05-0 bertanda "M5", "M6", "M7", "M8", "M9" dan "M10".
>
> Mahkamah: Semua barang kes di atas ditunjuk kepada saksi satu persatu dan dicamkan.
>
> Apabila saya menerima barang-barang kes tersebut, kesemuanya berada dalam keadaan baik dan bersil Jabatan Kimia.
>
> Semasa menerima barang-barang kes, saya ada buat semakan dengan Buku Daftar.
>
> Mahkamah: Sesalinan Buku Daftar ditunjuk dan dicamkan.

In support of his submission on this issue, the learned counsel for the appellant relied solely on the Federal Court case of *Eng Sin v. PP* [1974] 1 LNS 33. However the facts therein can be distinguished from that of this appeal. In *Eng Sin*, the gap surfaced after it was discovered that the blood sample was not labelled. In our case today from the evidence, as amply quoted above, the blood samples were properly named and labelled and that they were in relation to this particular criminal investigation. As such there is no gap that can give rise to any reasonable doubt.

(c) On the issue of the conduct of the appellant, it has been explained in finding (a) above. Furthermore, to our mind, the conducts of the appellant in calling his sister; driving to his sister's house; refusing to report to the police despite being advised by the sister; handing over his son to be kept at an orphanage and lastly of staying away at a Rumah Tumpangan, are relevant within the meaning under illustration (i) in s. 8(2) of the Evidence Act 1950.

As discussed earlier, the bent and broken scissors, the injuries to the appellant's right hand palm, the deceased's blood-stains on the appellant's T-shirt and shorts are all tell-tale facts that formed the strands of circumstantial evidence within the criteria set out in s. 7 of the Evidence Act 1950. The "serious" quarrel, prior to the commission of the offence, between the appellant and the deceased, was another strong strand of evidence, within the meaning of s. 14 of the Evidence Act 1950.

According to SP4, Dr. Shahidan Mohd. Noor, the cause of death was multiple stab and penetrating wounds. SP4 also testified that the scissors (exh. P8A) could have caused the wounds. The scissors was broken at the handle and that could have caused the injuries to the appellant's right hand palm. The injury to the palm, which is corroborated by the police report lodged by the arresting officer, SP3 was never challenged. There was no cross-examination of SP3's testimony. This constitutes the nexus between the appellant and the murder weapon. The discovery of the deceased's blood on the clothing's of the appellant (namely on exhs. P10A and P11A) is another damning piece of evidence linking the appellant to the murder.

[11] In evaluating the evidence adduced, we are mindful of the words of Thomson CJ in *Chan Chwen Kong v. PP* [1962] 1 LNS 22 to the effect that:

> ... what has to be considered is not only the strength of each individual strand of evidence but also the combined strength of these strands when twisted together to make a rope. The real question is: is that rope strong enough to hang the prisoner?

[12] Having so cautioned ourselves, we find that the circumstantial evidence are sufficient and strong enough to sustain the finding of guilt of the appellant. The cumulative evidence, though circumstantial, has irresistibly point to one and only conclusion that it was the appellant who had caused the injuries to the deceased and that such injuries were sufficient in the ordinary course of nature to cause death. We are satisfied that all the elements for the offence of murder as defined under s. 302 of the Penal Code, have been proved beyond reasonable doubt.

[13] In the circumstances, we are unanimous that the findings and conclusion by the learned trial judge should not be disturbed, as it was based on actual evidence and corroborated by material particulars by inference reasonably and properly drawn from other evidence adduced at the trial.

[14] For the above reasons, we find no merit in this appeal. The appeal is therefore dismissed and that the conviction and sentence imposed by the High Court is hereby affirmed.